(20,356.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 94.

AARON BLUTHENTHAL AND MONROE L. BICKART, COPARTNERS AS BLUTHENTHAL & BICKART, PLAINTIFFS IN ERROR,

vs.

ANGUS O. JONES, ADMINISTRATOR OF MILES C. JONES, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

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1 Be it remembered that on the nineteenth day of January, A. D. 1906, at a regular term of the Supreme Court of the State of Florida, came the appellants, Aaron Bluthenthal and Monroe L. Bickart, as copartners doing business under the firm name and style of Bluthenthal and Bickart, by counsel and filed in the clerk's office of the Supreme Court of Florida a transcript of the record of proceedings and order of the Circuit Court of Florida for Polk County, in a certain cause wherein Miles C. Jones was complainant and Aaron Bluthenthal and Monroe L. Bickart, as copartners doing business under the firm name and style of Bluthenthal and Bickart, were defendants, and of the appeal therein from the decree of the Circuit Court therein rendered, which said transcript of the record of the cause aforesaid and subsequent proceedings to decree and appeal therefrom is in the words and figures as follows, to wit:—

2 Transcript of Record of Proceedings in the Circuit Court of Polk County, Florida, in the suit of Miles C. Jones, complainant, *vs.* Aaron Bluthenthal and Monroe L. Bickart, as copartners doing business under the firm name and style of Bluthenthal & Bickart, defendants, therein lately pending, in chancery.

On the 19th day of June, 1905, the complainant filed his bill in the words and figures following:—

To the honorable Joseph B. Wall, Judge of the Sixth Judicial Circuit of Florida in and for Polk County, in chancery sitting:

Your orator Miles C. Jones, a citizen of the County of Polk and State of Florida, residing in said county, respectfully represents unto your Honor that on the 7th day of August A. D. 1900 Aaron Bluthenthal and Monroe L. Bickart, partners doing business under the firm name and style of Bluthenthal and Bickart, recovered a judgment against your orator in the circuit court of said county and state in the sum of seven hundred and thirty one dollars and twenty eight cents ($731.28) damages and six dollars and fifty three cents ($6.53) as costs, and had *had* execution issued and placed in the hands of the sheriff of said county; that said judgment was rendered upon an open account against your orator for goods, wares and merchandise sold and delivered to him by said Bluthenthal and Bickart.

Your orator further represents that on the 3rd day of August, A. D. 1903 he filed in the District Court of the United States for the Southern District of Florida, Middle Division, his petition in bankruptcy and among the claims or creditors of your orator scheduled and attached to his said petition in bankruptcy, it was the judgment of Bluthenthal and Bickart, and said creditors received due notice of the filing of said petition; and after due notice being given to the creditors of your orator, the said Bluthenthal
3 and Bickart also receiving notice, said petition came on to be heard by the Court and on the — day of —— A. D. 1903

your orator was duly adjudged a bankrupt under the Acts of Congress relating to bankruptcy; that afterwards within the time required by law your orator filed in said bankruptcy proceeding, his application for final discharge notice thereof being given as required by the Acts of Congress relating to bankruptcy to the creditors of your petitioner and to said Bluthenthal and Bickart, and on the 7th day of November, 1903, upon due consideration of said application your orator was discharged from all debts and claims which were made provable by said Acts against the estate of your petitioner including the claim of said Bluthenthal and Bickart, and which existed on the 3rd day of August A. D. 1903, excepting such debts as were, by law, excepted from the operation of a discharge in bankruptcy, as will more fully appear by reference to a copy of the order of discharge hereto attached, and your orator alleges that the claim of Bluthenthal and Bickart against your orator upon which they secured the judgment above mentioned, was a provable debt against the estate of your orator; was for goods, wares and merchandise sold and delivered to your orator, and did not come under any of the exceptions, under the Acts of Congress relating to bankruptcy.

Your orator further represents unto your Honor that since the 7th day of November A. D. 1903, the date when he was discharged from all his provable debts and claims which existed upon the 3rd day of August A. D. 1903, including the claim of Bluthenthal and Bickart, your orator has acquired title to the following described real estate, to wit: North half of Northeast quarter of southwest quarter of section three (3) northeast quarter of northwest quarter, west half of northwest quarter and southwest quarter of southwest quarter of section four (4); south half of northeast quarter
4 and southeast quarter of section six (6); northwest quarter of northeast quarter and east half of northwest quarter of section seven (7); east half of southwest quarter of northeast quarter and southeast quarter of northeast quarter and east half of southwest quarter of northeast quarter of section nine (9); all in township thirty two (32) south, range twenty five (25) east.

Your orator further represents unto your Honor that the said Bluthenthal & Bickart, notwithstanding that your orator has been discharged from any and all liability upon their said claim, under and by virtue of a decree of the District Court of the United States for the Southern District of Florida, Middle Division as aforesaid, has caused an alias execution to be issued upon said judgment, and on the 19th day of May A. D. 1905, the sheriff of said county levied the same upon the lands above described, as the property of your orator, and said lands are now being advertised for sale under and by virtue of said execution, to be sold on the first Monday in July A. D. 1905 for the alleged purpose of satisfying said execution with interest and costs.

Your orator further represents that said lands are not subject to levy and sale under said execution so as aforesaid issued and levied; that your orator was discharged from said claim as herein before alleged, and said claim has never been revived or renewed against your orator; and if the said Bluthenthal & Bickart shall be per-

mitted to continue their said proceeding against your orator and sell said lands under said execution as advertised, a cloud will be cast upon the title of your orator, and your orator will be put to great expense and annoyance in having the same removed.

For as much therefore as your orator is without remedy in the premises save in a court of equity, and to the end that Aaron Bluthenthal and Monroe L. Bickart, partners doing business in
5 the firm name and style of Bluthenthal & Bickart, who are made parties defendant to this bill, their agents, attorneys, servants or employees, may be enjoined and restrained by proper decree of this honorable court from selling or attemptiug to sell the lands herein described, on the first Monday in July A. D. 1905 or at any other time, under and by virtue of said judgment so as aforesaid rendered and execution issued thereon, and that the levy of said execution may be quashed and cancelled and the lands levied on thereunder be decreed to be free from and unincumbered by the lien thereof, and that such other and further order and decree may be granted in the premises as the nature of the case may require, and that will secure unto your orator immunity from molestation in the possession and enjoyment of said lands and prevent a further levy and seizure by said defendants, under and by virtue of said judgment and execution.

May it please the court to grant unto your orator the State's writ of subpœna directed to said Aaron Bluthenthal and Monroe Bickart, partners as aforesaid, whose postoffice address is —— ——, commanding them upon a day to be therein named to be and appear before said court to answer this bill, and to stand to and abide by such order and decree in the premises as shall be mete and proper, and your orator will ever pray.

WILSON & BOSWELL,
Comp's Sol's.

STATE OF FLORIDA, *County of Polk:*

Before the undersigned authority personally appeared M. C. Jones who being first duly sworn says that he is the complainant named in the foregoing bill, that he knows the contents thereof, and that the same are true.
6

M. C. JONES.

Sworn to and subscribed before me this 19 day of June A. D. 1905.

[OFFICIAL SEAL.]

S. G. WILSON,
Notary Public.

EXHIBIT ATTACHED TO BILL.

THE UNITED STATES OF AMERICA:

In the District Court of the United States for the Southern District of Florida, Middle Division.

In the Matter of MILES C. JONES, Bankrupt. No. 223, In Bankruptcy.

SOUTHERN DISTRICT OF FLORIDA, *ss:*

Whereas, Miles C. Jones of Polk, in said district, has been duly adjudged a bankrupt under the Acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf; it is therefore ordered by this Court that said Miles C. Jones be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the third day of August, A. D. 1903, on which day the petition for adjudication was filed by him; excepting such debts as are excepted by law from the operation of a discharge in bankruptcy.

Witness the honorable James W. Locke, judge of said District Court, and the seal thereof, this the Seventh day of November, A. D. 1903.

[SEAL OF COURT.] EUGENE O. LOCKE, *Clerk.*

Endorsed: Filed in the office of the Clerk of the Circuit Court of Polk County, Florida, May 7, 1904, and recorded in Book E Record of Chancery Orders on page III. A. B. Ferguson, Clerk Circuit Court. Record verified.

7 On the 19th day of July, 1905, the said defendants filed their answer to said bill in words and figures following:—

In the Circuit Court in and for Polk County, State of Florida, in Chancery.

MILES C. JONES

vs.

AARON BLUTHENTHAL and MONROE L. BICKART, as Copartners under the Firm Name and Style of Bluthenthal & Bickart.

Bill for Injunction.

Answer of the Defendants.

The Answer of Aaron Bluthenthal and Monroe L. Bickart, as Copartners under the Firm Name and Style of Bluthenthal & Bickart, to the Bill of Complaint of Miles C. Jones in the Above Stated Suit.

These defendants now and at all times hereafter saving and reserving to themselves all benefit and advantage of exceptions which

can or may be taken to the many errors, uncertainties and other imperfections in the said bill of complaint contained, or unto so much thereof as these defendants are advised is material or necessary for them to make answer unto, answering say:—

That they admit the residence of the parties as in said bill stated. That they admit recovering judgment, at the time, and in the court as in said bill stated, and for the amount also as therein stated. That they admit the bankruptcy proceedings of the complainant in the District Court of the United States, for the Southern District of Florida, and that the complainant obtained his discharge in bankruptcy as in said bill stated; that whether or not the debt of judgment of the defendants was scheduled in said bankruptcy proceedings, these defendants only know as in said bill alleged, as they had nothing to do with said proceedings, as to scheduling the said
8 debt or judgment of the defendants against the said complainant.

That the defendants did not participate in any way in such proceedings, did not prove their judgment or debt nor ask for any benefit arising from said proceedings, if any benefit there were to the creditors of the complainant.

That these defendants deny that their debt or judgment was in any way affected or discharged by reason of the discharge of the said *said* complainant in said bankruptcy proceedings, which he obtained in the State of Florida.

That these defendants admit that ostensibly the said complainant acquired the lands, which are set forth in said bill, since he obtained his discharge in bankruptcy, in the proceedings, which was given him by the said District Court of the United States, in Florida; that said lands were acquired from one E. E. Skipper, by quit-claim deed, a short time after said discharge in bankruptcy, for a nominal consideration, as is shown by the deed records for Polk County, Florida.

That these defendants admit that they levied upon said lands, and were proceeding to sell the same by virtue of said levy, under the judgment which they obtained against the said complainant, as in and by said bill is set forth, until restrained by this honorable court.

And these defendants further answering said bill say that in the year 1900, the said complainant was a resident of the State of Georgia, and during said year and while so a resident of said State, the said complainant began bankruptcy proceedings in said State, in the District Court for the Southern District of Georgia, of The United States; that these defendants participated in said bankruptcy proceedings of said complainant in the said State of Georgia, they being creditors of the said complainant at said time, upon the same cause of action, which was the cause of action in which they obtained their said judgment in the State of Florida against
9 the said complainant, as the same is set forth in said bill.

That when the said complainant, in his said bankruptcy proceedings in the State of Georgia, applied for his discharge therein, these defendants resisted his said discharge, and the court refused him his discharge in said proceedings; that the court's order refus-

ing him his discharge in said proceedings is hereto attached, by certified copy, and is made a part of this answer to said bill.

And these defendants further answering say, that they are informed advised and so believe that as they did not in any way participate in the bankruptcy proceedings in the State of Florida, of the complainant which was subsequent to his said proceedings in bankruptcy in the State of Georgia, in which he was refused his discharge, they, the said defendants, participating in such proceedings only in the State of Georgia, that their said debt or judgment against the complainant was in no manner affected by the complainant's alleged discharge in bankruptcy in the said State of Florida; and that the lands as set forth in said bill are subject to their execution upon their said judgment against the said complainant.

And these defendant's having fully answered the complainant's said bill pray to be hence dismissed with all their costs in this behalf expended.

H. K. OLLIPHANT,
Solicitor for the Defendants.

STATE OF GEORGIA, *Fulton County:*

Aaron Bluthenthal and Monroe L. Bickart, as copartners under the firm name and style of Bluthenthal & Bickart, being first duly sworn depose and say, that they have read the foregoing answer, and that the facts as set forth therein are true.

10 & 11

AARON BLUTHENTHAL.
MONROE L. BICKART.

Subscribed and sworn to before me this the 17th day of July 1905.

[OFFICIAL SEAL.]

MORES KAUFMAN,
Notary Public, Fulton County, Georgia.

EXHIBIT ATTACHED TO SAID ANSWER.

In the District Court of the United States for the Western Division of the Southern District of Georgia.

In re M. C. JONES, Bankrupt. In Bankruptcy.

Objections to Discharge.

Upon considering the objections to the discharge of the bankrupt filed in the above matter by Bluthenthal & Bickart, and the evidence in support thereof, it is Ordered that said objections be sustained and said application for discharge be denied and refused. This December 3rd, 1900.

EMORY SPEER, *Judge.*

Backing on cover: No. 134 U. S. District Court Western Division Southern District of Georgia. Recorded. *In re* M. C. Jones, bankrupt. In Bankruptcy, Objections Bluthenthal & Bickart. Order sustaining objections and refusing and denying application for discharge. Filed 11.30 o'clock A. M. Dec. 3, 1900, L. M. Erwin, Deputy Clerk. Ent.

The above is a true and correct copy from the original on file in the Clerk's office in the United States Court, for said Division and District. This the 30th day of June, A. D. 1905.

[OFFICIAL SEAL OF COURT.] L. M. ERWIN,
Deputy Clerk.

* * * * * * *

12 On the 2d., day of October 1905, the said defendants filed their additional answer in words and figures following:

In the Circuit Court in and for Polk County, State of Florida. In Chancery.

M. C. JONES
vs.
AARON BLUTHENTHAL and MONROE L. BICKART, as Co-partners under the Firm Name of Bluthenthal & Bickart.

Bill for Injunction.

The defendants in the above stated cause, in compliance with the court's order sustaining the exception to the answer heretofore filed by the defendants, the said order being of date the 16th., of September, 1905, filed this their further and additional answer to said bill.

These defendants admit that complainant gave, and these
13 defendants received, the said notice of the complainant's application for his said discharge in the bankruptcy proceedings of the complainant in the said State of Florida.

A. BLUTHENTHAL,
M. L. BICKART,
Defendants, as Copartners under the Firm Name of Bluthenthal & Bickart.

H. K. OLLIPHANT,
Solicitor for Defendants.

STATE OF GEORGIA, *Fulton County:*

Aaron Bluthenthal for himself and as agent for his copartner Monroe L. Bickart, being first duly sworn says that the allegations in the foregoing answer are true.

A. BLUTHENTHAL.

Subscribed and sworn to before me this the 29th day of September, 1905.

[OFFICIAL SEAL.] ROB'T C. PATTERSON,
Notary Public, Fulton County, Ga.

My commission expires Oct. 9th, 1908.

On the 20th day of November, 1905, the complainant having set said cause down for final hearing upon the bill and answers thereto, the court did make and render its final decree in said cause in words and figures following:—

In the Circuit Court of the Sixth Judicial Circuit of Florida in and for Polk County. In Chancery Sitting.

MILES C. JONES

vs.

AARON BLUTHENTHAL and MONROE L. BICKART, Partners Doing Business under the Firm Name and Style of Bluthenthal & Bickart.

Injunction.

14 & 15 This cause coming on to be heard upon bill and answer filed herein, and argument of counsel, and it appearing to the court that the equities of the case are with the complainant.

It is therefore upon consideration ordered, adjudged and decreed that the lands described in complainant's bill of complaint are not subject to levy and sale under the execution issued upon the judgment of the defendants, and that the levy made thereunder upon said described lands and the same is hereby quashed and cancelled, and the said lands are hereby decreed to be free and unincumbered from the lien of said execution and levy.

It is further ordered, adjudged and decreed that the said Aaron Bluthenthal and Morgan L. Bickart, partners doing business under the firm name and style of Bluthenthal & Bickart, their agents, attorneys, servants and employees be and they are hereby permanently enjoined and restrained from selling or attempting to sell the lands described in said bill of complaint under said execution and levy, and from molesting the possession or enjoyment of complainant in and to said lands.

Given under my hand at Chambers, Tampa, Florida, the 20th day of November, A. D. 1905.

J. B. WALL,
Judge of Circuit Court.

(Endorsed:) Filed in the office of the Clerk of the Circuit Court of Polk County, Florida, Nov. 23, 1905, and recorded in Book E. Record of Minutes Circuit Court on page 540. A. B. Ferguson, Clerk Circuit Court Record verified.

* * * * * * *

16 *Certified Copy of the Recorded Entry of Appeal.*

And on the 26th day of December, A. D. 1905, the said defendants entered their appeal in said cause in words and figures following, as the same appears of record in the Chancery Order Book of said court:—

In the Circuit Court in and for Polk County, State of Florida. In Chancery.

MILES C. JONES
vs.
AARON BLUTHENTHAL and MONROE L. BICKART, as Copartners Doing Business under the Firm Name and Style of Bluthenthal & Bickart.

Injunction.

Entry of Appeal.

Now come the defendants in the above stated cause, by their solicitor, and enter this their appeal from the decree of said court, made and rendered on the 20th day of November, A. D. 1905 to the next term of the Supreme Court of the State of Florida, to wit, the January term 1906 thereof. This their said appeal being made returnable to the First day of February, 1906, of said term.

This the 26th day of December, A. D. 1905.

H. K. OLLIPHANT,
Solicitor for Defendants.

Certificate of Clerk.

STATE OF FLORIDA, *Polk County:*

I, A. B. Ferguson, Clerk of the Circuit Court in and for said county and State, do hereby certify that the foregoing entry of appeal, in said stated cause, was by me recorded in the Chancery Order Book E of said court, at page 239, this the 26 day of
17–20 December, A. D. 1905.

Witness my hand and seal of said court this 26 day of December A. D. 1905.

[SEAL OF COURT.] A. B. FERGUSON,
Clerk of Circuit Court, Polk County, Florida.

STATE OF FLORIDA, *Polk County:*

I, A. B. Ferguson, Clerk of the Circuit Court in and for said State and county, do hereby certify that the foregoing is a true and correct copy of the entry of appeal in the said stated case, together with my certificate of recording the same, as attached thereto, as the same appear of record in my office, in Chancery Order Book E of said court, at page 239.

Given under my hand and official seal of said court this the 17th day of January, A. D. 1906.

[SEAL OF COURT.] A. B. FERGUSON,
Clerk of Circuit Court, Polk County, Florida.

* * * * * * *

21 On the 26th day of December A. D. 1906, the defendants filed their assignments of errors in words and figures following:—

In the Circuit Court for Polk County, State of Florida. In Chancery.

MILES C. JONES
vs.
AARON BLUTHENTHAL and MONROE L. BICKART, as Copartners Doing Business under the Firm Name and Style of Bluthenthal & Bickart.

Injunction.

22 & 23 *Assignments of Errors.*

Now come the defendants in the above stated case, by their solicitor, on this the 26th day of December, A. D. 1905, and make the following assignments of errors, in accordance with their appeal, taken and entered on said day in said cause:—

1. The said court erred in sustaining the exceptions of the complainant to the answer of the defendants, requiring the defendants to state whether or not the complainant gave, and the defendants received, notice of the complainant's application for his discharge in bankruptcy in the State of Florida.

2. The court erred in making and rendering the decree of November 20th 1905, wherein the court held that the lands of the complainant levied upon by the defendants were not subject to said levy, and permanently enjoining the defendants from proceeding with their execution against said lands.

3. The court erred in holding that the matters and things set forth in the answers of the defendants were not *res judicata* between the defendants and complainant, and, upon the equities of said cause as presented by the bill and answers, in not dismissing the said bill.

H. K. OLLIPHANT,
Solicitor for Defendants.

We hereby accept service of the foregoing assignments of errors by copy this the 26th day of December, 1905.

WILSON & BOSWELL,
Solicitors for Complainant.

* * * * * * *

24 And afterwards on the 29th day of May, A. D. 1906, the court filed the following opinion in said cause:

In the Supreme Court of Florida, Division B. January Term, A. D. 1906.

POLK COUNTY:

AARON BLUTHENTHAL and MONROE L. BICKART, Copartners as Bluthenthal & Bickart, Appellants,

v.

M. C. JONES, Appellee.

Statement.

On the 19th day of June, 1905, the appellee as complainant filed his bill in the Circuit Court of Polk County against the appellants Bluthenthal & Bickart, alleging therein that on the 7th day of August, 1900, the appellants recovered a judgment against him in the said court for $731.28, and $6.53 costs, and had an execution thereon issued and placed in the hands of the sheriff of said county; that said judgment was rendered upon an open account for goods, wares and merchandise sold and delivered to him by the said firm of Bluthenthal & Bickart; that on the 3rd of August, 1903, complainant filed in the District Court of the United States for the Southern District of Florida, Middle Division, his petition in bankruptcy, and that among the claims or creditors of complainant scheduled and attached to this petition in bankruptcy, was the said judgment of appellants, and that they received due notice of the filing of said petition; that after due notice to the creditors of complainant including Bluthenthal & Bickart, said petition came on to be heard, and on the — day of ——, 1903, the complainant was adjudged a bankrupt under the acts of Congress relating to bankruptcy, and within the time required by law he filed his application for final discharge, notice being given to the creditors, including appellants, and on the 7th of November, 1903, complainant was discharged from all debts and claims, including that of appellants, which existed on the 3rd of August, 1903, excepting such debts as were by law excepted from the operation of a discharge in bankruptcy, as will more fully appear by a copy of the order attached to the bill, and that the claim of Bluthenthal & Bickart was a provable debt against appellant's estate and did not come under any of the exceptions of the law relating to bankruptcy. The bill alleges that since the 7th of November, 1903, the date of his discharge, complainant has acquired title to certain real estate, describing it, and that appellants have caused an alias execution to be issued upon their judgment, and the sheriff levied the same on the described lands on the 19th of May, 1905, as the property of complainant, and that said lands are now being advertised for sale under said execution, to be sold on the first Monday in July, 1905, for the alleged purpose of satisfying said execution and costs. The bill alleges that said lands are not subject to levy and sale under said execution by reason of complainant's discharge, and that if Bluthenthal & Bickart are permitted to continue said pro-

ceedings and sell said lands under said execution, a cloud will be cast on the title, and the complainant will be put to annoyance and expense in having same removed. The bill alleges that complainant is without remedy save in equity, and prays an injunction against said sale and general relief. The copy of the order of discharge in bankruptcy is as follows:

"THE UNITED STATES OF AMERICA:

In the District Court of the United States for the Southern District of Florida, Middle Division.

In the Matter of MILES C. JONES, Bankrupt. No. 223. In Bankruptcy.

SOUTHERN DISTRICT OF FLORIDA, *ss:*

Whereas, Miles C. Jones of Polk —, in said district has been duly adjudged a bankrupt under the Acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf; it is therefore ordered by this court that said
26 Miles C. Jones be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the third day of August, A. D. 1903, on which day the petition for adjudication was filed by him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness the Honorable James W. Locke, Judge of said District Court, and the seal thereof, this seventh day of November, A. D. 1903.

[SEAL OF COURT.] EUGENE O. LOCKE, *Clerk.*"

The defendants below, appellants here, answered the bill. They admit the bankruptcy proceedings and discharge of complainant as alleged in the bill, that whether or not their judgment was scheduled in said proceedings, they only know as alleged in the bill, as they had nothing to do with the said proceedings as to scheduling said debt or judgment; that they did not participate in any way in said proceedings or prove their judgment, or ask any benefit of said proceedings. They admit notice of his application for a discharge. They deny that their debt or judgment was in any way affected or discharged by reason of the discharge of complainant which he obtained in Florida. They admit that complainant ostensibly acquired for a nominal consideration the lands as described by quitclaim deed shortly after his discharge, as shown by the records of Polk County. They admit that they levied *on* them as alleged. The answer then alleges that in the year 1900 complainant was a resident of Georgia, and there began bankruptcy proceedings in said State in the District Court of the United States for the Southern District of Georgia, and that they participated in said proceedings, being then creditors upon the same cause of action upon which they obtained their judgment against complainant in Florida, as alleged in the bill; that when complainant applied for a discharge in the pro-

ceedings in Georgia, they resisted it, and the court refused, and the order refusing it is attached to the answer, and made a part of it. The answer then alleges that as they did not participate in the subsequent bankruptcy proceedings in Florida that their debt or judgment against the complainant was in no manner affected by the discharge in bankruptcy obtained in Florida, and that the lands levied on are subject to their execution.

27 The order refusing the discharge in the United States Court in Georgia, is as follows:

"In the District Court of the United States for the Western Division of the Southern District of Georgia.

In re M. C. JONES, Bankrupt. In Bankruptcy.

Objections to Discharge.

Upon considering the objections to the discharge of the bankrupt filed in the above matter by Bluthenthal & Bickart, and the evidence in support thereof, it is ordered that said objection be sustained and said application for discharge be denied and refused. This December 3rd, 1900.

EMORY SPEER, *Judge.*"

The foregoing contains the substance of the bill and answer.

The cause was set down for hearing and heard on bill and answer, no replication having been filed. The chancellor decreed that the lands of complainant were not subject to levy and sale under the judgment and execution of the defendants, and enjoined them from selling or attempting to sell thereunder. From this decree the defendants appealed to this court.

HOCKER, *J.* (after stating the facts):

The only question here is one of law. The contention of the appellants Bluthenthal & Bickart is that because they participated in the bankruptcy proceedings in the United States Court in Georgia, in the year 1900, and proved their account against Jones in that proceeding, and resisted his discharge there, that the order of the United States District Judge refusing to grant him a discharge rendered their claim "*res adjudicata*," and that as they did not participate in the bankruptcy proceedings in the United States District Court in Florida in 1903, the order of the District Judge in the last proceeding, discharging Jones from his debts, did not apply to their claim or judgment. We have examined all the decisions referred to in the able briefs of the respective parties, but no one of these authorities presents facts which are analogous to the one at bar. Neither have we been able to find an analogous case in our library.

28 The case of Re Drisko, 2 Lowell 430, cited by appellants, turned largely upon the construction of the bankruptcy law in force in the year 1875, and there too the question of the effect of

a previous refusal to discharge the bankrupt was raised in the second proceeding by a creditor, and in that second proceeding the effect of the former action was adjudicated.

In the case of Kuntz *v.* Young, 131 Fed. Rep. 719, it was held that "a failure of the bankrupt to apply in due time for, or a refusal by the court to grant, a discharge from debts provable in proceedings under one petition in bankruptcy, renders the question of the right of the bankrupt to a discharge from those debts in a proceeding under a subsequent petition *res adjudicata*." But in this case both petitions were filed in the same District Court and the question of the right to a discharge seems to have been raised by the report of the Trustee showing all the facts. The District Court itself passed on the question of the effect of the second petition, and dismissed it.

In the case of *In re* Fiegenbaum, 121 Fed. Rep. 69, the question of the bankrupt's right to a discharge under a second petition, he having been denied a discharge in the first was also raised in and determined by the court in which the second petition was pending.

In the case — *In re* Herrman, 102 Fed. Rep. 753, the question presented was whether one who had been refused a discharge under the bankruptcy law of 1867, was debarred by the bankruptcy law of 1898, from obtaining a discharge under the last act, embracing debts proven against him under the first. The court held he was not barred. In this case also, the question of the effect of the discharge was raised by creditors in the United States District Court which was asked to grant the discharge. The Massachusetts cases turn somewhat on the insolvency laws of Massachusetts, and we think it unnecessary to review them at length.

It appears from all the decisions we have seen that the question here raised is one of *res adjudicata;* that is to say, whether when a debt was proved under the first bankruptcy proceeding, and a discharge refused in that proceeding, the right to a discharge from this debt was thereby settled and adjudicated, and could not be
29 affected by the second proceeding. We are of opinion that such a question was one which the creditor himself should have raised in the second proceeding in bankruptcy in the United States District Court, and that court then having jurisdiction of the whole matter should have been requested to adjudicate the effect of the proceeding and of the general discharge which it granted. It will be observed that the record does not show why the discharge was refused in the first proceeding, nor does it show that the debt in this case comes within any of the exceptions of section 17 of the Bankrupt Act approved July 1st, 1898; nor is it contended here that it does. Bluthenthal & Bickart were notified of the last proceeding in bankruptcy, refused to participate in any way in it, and to raise the question of *res adjudicata* in the said proceeding. It is true that a discharge in bankruptcy is general in its terms, and its effect is generally left to be determined by the court where it is pleaded. But we do not think that in a case like the one at bar it would be prudent or proper for this court to do more, in giving effect to a discharge, than to determine whether the debt was em-

braced in the exceptions of the statute, leaving all other questions to be determined by the Federal courts, where they properly belong.

The decree appealed from is affirmed at the cost of appellants.

Taylor and Parkhill, JJ., concur.

Cockrell and Whitfield, JJ., concur in the opinion.

Shackleford, C. J., disqualified.

30 And thereupon on the same day the judgment of the court was entered, which is in words and figures following, to wit:

AARON BLUTHENTHAL and MONROE L. BICKART, Copartners as Bluthenthal & Bickart, Appellants,

v.

M. C. JONES, Appellee.

Upon an Appeal from a Decree of the Circuit Court within and for the County of Polk.

This cause having been submitted to the court at a previous day of this term upon a transcript of the record of the decree aforesaid and the argument of counsel for the respective parties, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the premises, it seems to the court that there is no error in the said decree; it is, therefore, considered, ordered and adjudged by the court that the said decree of the Circuit Court be and is hereby affirmed; and it is further ordered that the appellee do recover of the appellants his costs by him in this behalf expended, which costs are taxed at the sum of —— —— all of which is ordered to be certified to the court below.

31 I, M. H. Mabry, Clerk of the Supreme Court of the State of Florida, do hereby certify that the foregoing pages numbered from one (1) to thirty (30) inclusive constitute a true copy of all the proceedings, of all orders made and of all opinions filed by the Supreme Court of Florida, and a correct transcript of the record of the judgments rendered by the said Supreme Court of Florida in the case of Aaron Bluthenthal and Monroe L. Bickart, as copartners as Bluthenthal & Bickart, appellants, against Miles C. Jones, appellee, as appear upon the files and records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said Supreme Court of Florida, at Tallahassee, the Capital, this 6th day of July A. D. 1906.

[Seal Supreme Court of the State of Florida.]

M. H. MABRY,
Clerk Supreme Court, State of Florida.

32 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Aaron Bluthenthal and Monroe L. Bickart as copartners as Bluthenthal & Bickart, as appellants therein, and now plaintiffs in error, and Miles C. Jones, as appellee therein, and now defendant in error wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction
33 of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Aaron Bluthenthal and Monroe L. Bickart as copartners as Bluthenthal & Bickart, now plaintiffs in error as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the sixth (6) day of Aug., in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed *by* to operate as a supersedeas on bond for five hundred dollars by me approved.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

34 [Endorsed:] (Original. Writ of error.)

BARTOW, FLA., *August 11th*, 1906.

We the attorneys of record for the defendant in error hereby acknowledge the receipt of a copy of this writ of error.

SOLON G. WILSON,
CLARENCE A. BOSWELL,
C. C. WILSON,
T. L. WILSON,
Att'ys for M. C. Jones.

Supreme Court, State of Florida, *ss:*

I, M. H. Mabry, clerk of the said court, do hereby certify that there was lodged with me and filed by me as such clerk on August 22nd 1906 in the suit of Bluthenthal & Bickart *vs.* Miles C. Jones a copy of this writ of error, and the original bond in said cause of which a copy is in the transcript of record.

Witness my hand & seal of said court this the 22nd day of August A. D. 1906.

[Seal Supreme Court of the State of Florida.]

M. H. MABRY,
Clerk Supreme Court of Florida.

35 UNITED STATES OF AMERICA, *ss:*

To Miles C. Jones, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Florida wherein Aaron Bluthenthal and Monroe L. Bickart as Copartners as Bluthenthal & Bickart are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Associate Justice of the Supreme Court of the United States, this 6th day of Aug., in the year of our Lord one thousand nine hundred and six.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

36 BARTOW, FLORIDA, *August 11th*, 1906.

We, the attorneys of record for the defendant in error in the above entitled cause, do hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States, in said cause.

C. C. WILSON,
T. L. WILSON,
SOLON G. WILSON,
CLARENCE A. BOSWELL,
Attorneys for Miles C. Jones.

37 Supreme Court of the State of Florida.

AARON BLUTHENTHAL and MONROE L. BICKART, as Copartners under the Firm Name and Style of Bluthenthal & Bickart, Appellants,

vs.

MILES C. JONES, Appellee.

Assignment of Errors.

Now come the appellants, by their attorney and solicitor, in the above stated cause, in connection with and at the time of being allowed the writ of error to the Supreme Court of the United States therein, and make and file the following assignment of errors:—

The Supreme Court of Florida erred in affirming the decree of the Circuit Court for Polk County, State of Florida. The Court in so affirming said decree decided that the lands of the appellee, which the appellants had levied on under their execution upon their judgment against said appellee, in the said court for said county, were not subject to said levy; that the appellee was discharged from said judgment, and the same was not enforceable against him, by reason of his discharge in bankruptcy by the United States District Court for the Southern District of Florida; that, while the appellee had become a bankrupt in the State of Georgia, prior to his being discharged as a bankrupt in the State of Florida, and had been denied his discharge as a bankrupt by the United States District Court for the Southern District of Georgia upon the resistance of the appellants upon the same debt on which their said judgment was based, it was necessary for the appellants to set up or plead or present to the bankruptcy court in Florida the refusal of the bankruptcy
38 court in Georgia to discharge appellee, in order that the appellants' debt or judgment should not be affected by appellee's di-charge by the court in Florida; the appellants did not participate at all in the latter bankruptcy proceedings of appellee, in which he obtained his discharge, though appellants received due notice of the same.

The appellants contend that, as they did not participate in the latter bankruptcy proceedings of the appellee, such proceedings could not rest upon their debt or judgment against him; that the refusal of discharge by the bankruptcy court in Georgia was *res judicata;* and that matters in bankruptcy being *in rem* as well as *in personam,* and the two bankruptcy courts being co-ordinate and under the same sovereignty, it was not necessary for them to present to the Florida bankruptcy court the refusal of the Georgia bank-ruptcy court to discharge the appellee as a bankrupt; and that their judgment or debt against appellee was not affected at all by his discharge by the Florida bankruptcy court; and that the Supreme Court of Florida should have reversed the decree of the Circuit Court for Polk County, Florida, and have directed that appellee's bill be dismissed against them, and the permanent injunction granted thereon

restraining appellants from proceeding with their said levy be dissolved etc.

Wherefore, the appellants pray that the decree of the honorable Supreme Court of Florida may be passed upon by the Supreme Court of the United States, and that its decree of affirmance of the lower State court's decree may be reversed, and that the bill of appellee may be directed to be dismissed.

H. K. OLLIPHANT,
Attorney and Solicitor for Appellants.

39 Know all men by these presents, That we, Aaron Bluthenthal and Monroe L. Bickart as copartners as Bluthenthal & Bickart, as principal, and W. L. Sperring and Bennett T. Mayo, as sureties, are held and firmly bound unto Miles C. Jones in the full and just sum of Five Hundred (500) dollars, to be paid to the said Miles C. Jones, his certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 12th day of July, in the year of our Lord one thousand nine hundred and six.

Whereas, lately at a term of the Supreme Court of the State of Florida, on the 29th day of May, 1906, in a suit depending in said Court, between the said Aaron Bluthenthal and Monroe L. Bickart as copartners as Bluthenthal & Bickart, as appellants, and the said Miles C. Jones, as appellee, a final decree was rendered against the said Aaron Bluthenthal and Monroe L. Bickart as copartners as Bluthenthal & Bickart and the said Bluthenthal & Bickart having been allowed a writ of error from said decree and having obtained said writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the said decree in the aforesaid suit, and a citation directed to the said Miles C. Jones citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Aaron Bluthenthal and Monroe L. Bickart as copartners as Bluthenthal & Bickart shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

AARON BLUTHENTHAL. [SEAL.]
MONROE L. BICKART. [SEAL.]
W. L. SPERRING. [SEAL.]
BENNETT T. MAYO. [SEAL.]

Sealed and delivered in presence of—
J. M. WRIGHT.
T. B. SLAUGHTER.
G. R. DE SAUSSURE.
F. P. FLEMING, JR.

Approved by—
EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

40 STATE OF FLORIDA, *County of Duval, ss:*

W. L. Sperring and Bennett T. Mayo being each duly sworn, on oath depose & say: We are each of lawful age and are citizens of the State of Florida, and know the contents of the foregoing instrument to which we have attached our names. We each for himself say we are worth the sum of Five Hundred dollars over and above all debts, liabilities and exemptions, under the laws of the State of Florida.

W. L. SPERRING.
BENNETT T. MAYO.

Subscribed to & sworn to before me this 31st day of July, A. D. 1906.

F. P. FLEMING, Jr.,
[NOTARIAL SEAL.] *Notary Public, State of Florida, at Large.*

Endorsed: Filed this 22nd day of August, A. D. 1906. M. H. Mabry Clerk Supreme Court.

41 UNITED STATES OF AMERICA, *ss:*

Supreme Court of Florida.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court, in the City of Tallahassee, this August 24th, A. D. 1906.

[Seal Supreme Court of the State of Florida.]

M. H. MABRY,
Clerk of the Supreme Court of the State of Florida.

42 Supreme Court of the United States.

AARON BLUTHENTHAL and MONROE L. BICKART, as Copartners as Bluthenthal & Bickart, Plaintiffs in Error,
vs.
MILES C. JONES, Defendant in Error.

Stipulation as to Printing Record.

It is stipulated and agreed by and between counsel for the plaintiffs in error and counsel for the defendant in error, in the above stated cause, that in order to save expense in the printing of the record herein, that the following portions of the record, the same being sufficient to show the errors complained of, shall be printed and no more, to-wit:

1. Bill of complaint and its exhibit.
2. Answer to bill and its exhibit.
3. Additional answer to the bill.
4. Decree of the Polk County Circuit Court.
5. Entry of appeal to the Supreme Court of Florida.
6. Assignment of errors in said appeal to Supreme Court of Florida.
7. Decree of the Supreme Court of Florida, affirming decree of Polk County Circuit Court.
8. Opinion of the Supreme Court of Florida.
9. Assignment of errors as made by the Supreme Court of Florida.
10. Writ of error and endorsements.
11. Copy of appeal bond.
12. Citation and acceptance of service etc.
13. Clerk's certificate of the transcript of record.
14. Clerk's return on writ of error.

It is further stipulated and agreed, that if from oversight or
43 omission any necessary part of the record be not thus printed, that the plaintiffs in error have the right to print, or may be required by the defendant in error to print, any further or additional portions thereof.

This the 15th day of August, 1906.

BENJAMIN F. PHILLIPS, [OK.]*
JOHN M. SLATON,
H. K. OLLIPHANT,
Attorneys for Plaintiffs in Error.
SALON G. WILSON, [OK.]*
CLARENCE A. BOSWELL,
C. C. WILSON,
T. L. WILSON,
Att'ys for Defendant in Error.

44 [Endorsed:] File No. 20356. Supreme Court U. S. October Term, 1906. Term No. 391. Aaron Bluthenthal *et al.* &c. Pl'ffs in Error, *vs.* Miles C. Jones. Stipulation as to printing record. Filed Aug. 28, 1906.

Endorsed on cover: File No. 20,356. Florida supreme court. Term No. 94. Aaron Bluthenthal and Monroe L. Bickart, Copartners as Bluthenthal & Bickart, plaintiffs in error, *vs.* Angus O. Jones, administrator of Miles C. Jones, deceased. Filed August 28, 1906. File No. 20,356.

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* In pencil in copy.

Office Supreme Court,
FILED.
AUG 30 1907

Supreme Court of the United States,

October Term, 1907,

Number 94

Aaron Bluthenthal and Monroe L. Bickert,
Copartners as
Bluthenthal & Bickert,
Plaintiffs in Error

VS

Angus O. Jones,
Administrator of Miles C. Jones, Deceased,
Defendant in Error

In Error to the
Supreme Court *of the* State *of* Florida.

Brief for Plaintiffs in Error

Benjamin Z. Phillips,
John M. Slaton,
H. K. Olliphant,
Attorneys for Plaintiffs in Error

Supreme Court of the United States,

OCTOBER TERM, 1907.

No. 94.

AARON BLUTHENTHAL AND MONROE L. BICKART, CO-PARTNERS AS BLUTHENTHAL & BICKART,

PLAINTIFFS IN ERROR,

VS.

ANGUS O. JONES, ADMINISTRATOR OF MILES C. JONES, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT OF FACTS.

Miles C. Jones became a bankrupt in the State of Georgia in the year 1900, before the United States District Court for the Southern district of that State. At that time the plaintiffs in error were creditors. When Jones' application for discharge as a bankrupt came on to be heard before that court plaintiffs in error resisted the discharge, and such discharge was refused Jones by the court.

Jones, in the mean time, came to the State of Florida, and becoming a resident of said State, plaintiffs in error brought suit in the Circuit Court for Polk County, Florida, upon their said debt against Jones. They obtained a judgment against

Jones upon this debt in said State Court on August 7, 1900, during the pendency of their resistance against his discharge as a bankrupt in the State of Georgia; the refusal by the court there to grant him such discharge being of date December 3, 1900. (See Record pp. 1-6.)

On August 3, 1903, while a resident of the State of Florida, the said Miles C. Jones began bankruptcy proceedings in the United States District Court for the Southern District of Florida, scheduling the said debt or judgment of plaintiffs in error as a liability therein against him. On November 7, 1903, he obtained his discharge as a bankrupt by said court. Notice of his application for such discharge, as well as notice of his filing his petition in bankruptcy in said court, was given by him to plaintiffs in error. The plaintiffs in error did not participate in any way in the proceedings in bankruptcy in the State of Florida.

On May 19, 1905, the plaintiffs in error levied an execution from their said judgment in the State Court upon certain lands belonging to Jones in Polk County, Florida. Jones, on June 19, 1905, filed his bill in chancery in the State Circuit Court, to restrain said levy, alleging in his bill that he had been discharged from the said judgment by his discharge as a bankrupt by the Florida bankruptcy court. The plaintiffs in error answered said bill, setting up the bankruptcy proceedings in Georgia, and the court's refusal there to discharge him as a bankrupt, and alleging that their judgment against him was not affected by his said discharge in Florida. The cause was set down for final hearing upon bill and answer. The lower State Court granted a permanent injunction against the plaintiffs in error, restraining them from proceeding with the levy under their said execution against said lands. The plaintiffs in error

thereupon appealed said cause to the Supreme Court of Florida; and that court on May 29, 1906, affirmed the judgment of the lower court. (See Record pp. 10-12.) From said decree of the Supreme Court of Florida, the plaintiffs in error have prosecuted a writ of error to this court.

ASSIGNMENT OF ERROR.

The Supreme Court of Florida erred in affirming the decree of the Circuit Court for Polk County, State of Florida. The court in so affirming said decree decided that the lands of the appellee, which the appellants had levied on under their execution upon their judgment against said appellee, in the said court for said county, were not subject to said levy; that the appellee was discharged from said judgment, and the same was not enforceable against him, by reason of his discharge in bankruptcy by the United States District Court for the Southern District of Florida; that, while the appellee had become a bankrupt in the State of Georgia, prior to his being discharged as a bankrupt in the State of Florida, and had been denied his discharge as a bankrupt by the United States District Court for the Southern District of Georgia upon the resistance of the appellants upon the same debt on which their said judgment was based, it was necessary for the appellants to set up or plead or present to the bankruptcy court in Florida the refusal of the bankruptcy court in Georgia to discharge appellee, in order that the appellant's debt or judgment should not be affected by appellee's discharge by the court in Florida; the appellants did not participate at all in the latter bankruptcy proceedings of appellee, in which he obtained his discharge, though appellants received due notice of the same.

The appellants contend that, as they did not participate in the latter bankruptcy proceedings of the appellee, such pro-

ceedings could not rest upon their debt or judgment against him; that the refusal of discharge by the bankruptcy court in Georgia was res adjudicata; and that matters in bankruptcy being in rem as well as in personam, and the two bankruptcy courts being co-ordinate and under the same sovereignty, it was not necessary for them to present to the Florida bankruptcy court the refusal of the Georgia bankruptcy court to discharge the appellee as a bankrupt; and that their judgment or debt against appellee was not affected at all by his discharge by the Florida bankruptcy court; and that the Supreme Court of Florida should have reversed the decree of the Circuit Court for Polk County, Florida, and have directed that appellee's bill be dismissed against them, and the permanent injunction granted thereon restraining appellants from proceeding with their said levy be dissolved, etc.

Wherefore, the appellants pray that the decree of the honorable Supreme Court of Florida may be passed upon by the Supreme Court of the United States, and that its decree of affirmance of the lower State court's decree may be reversed, and that the bill of appellee may be directed to be dismissed.

ARGUMENT.

As we have assumed to reverse the court below, we naturally look to its opinion for its reasons for deciding the case against us. That court, in passing upon and reviewing many of the cases which we cited in support of our contentions, admitted the following propositions as being correct:

1. That the decision of the bankruptcy court in Georgia in denying Jones' discharge in bankruptcy was res adjudicata.

2. That a discharge in bankruptcy is general, and its effect is left to each particular case as it may arise.

We cite the following cases as confirming the admission of

the court below upon the above two propositions: Kuntz v. Young 131 Fed. Rep. 719; Re Drisko 2 Lowell 430; In re Herrman 102 Fed. Rep. 753; Gilbert v. Hebard, 8 Metc. 129; Dean v. Justices, 173 Mass. 453.

But the court below differed from us in holding that we should have presented the question of res adjudicata, and the effects of the refusal of the bankruptcy court in Georgia to discharge Jones, to the bankruptcy court in Florida for adjudication. We claim that we should not have done so. It seems to us that the court below was wrong for two reasons:

(A) It overlooks the natural results of the propositions as stated above, which the court admits are correct.

(B) It also overlooks the fact that proceedings in bankruptcy are in rem as well as in personam, and that the two bankruptcy courts were coordinate in authority and under the same sovereignty.

PROPOSITION A.

The only direct case we know of on this point is the case of In re Claff, which, as the court below did not seem to consider particularly, and as it is brief, we give in full:

IN RE. CLAFF.

U. S. District Court, District of Massachusetts, November 1, 1901. Discharge—refusal—new proceedings—effect of discharge in.

After a discharge has been refused, the bankrupt may file a second petition, and as a discharge granted thereunder will be no bar to a suit upon a debt scheduled under the first commission, and not proved under the second, it should be general, leaving its effect to be determined by subsequent proceedings:

Application for a discharge.

Opinion of Lowell, District Judge; Claff was adjudicated a

bankrupt in 1899, upon a voluntary petition. His discharge was refused for fraudulent concealment of assets. In 1900 he filed a second petition, and seeks a discharge thereunder. That his discharge under the second petition, if obtained, will be no bar to a suit upon a debt scheduled under the first commission, and not proved under the second, seems clear. Gilbert v. Hebard, 8 Metc. 129; In re. Drisko 2 Low. 430, Fed. Cas. No. 4,090. See Dean v. Justices, 173 Mass. 453, 53 N. E. 893. But this fact does not prevent the bankrupt from filing a second petition, or from getting a discharge thereunder, for whatever the discharge may be worth. In re. Drisko, above cited. The discharge is granted, and no exception will be made therein of debts scheduled under the earlier commission. It is more convenient to make the discharge a general one, and to leave its effect to be determined by subsequent proceedings. In re. Marshall Paper Co. 4 Am. Bank. Rep. 468, 43 C. Ca. 38, 102 Fed. '72, and cases cited; In re. Black (D. C.) 4 Am. B. R. 471, note, 97 Fed. 493.

If this case of In re. Claff is correct (and it was upon this case we based our not going into the bankruptcy court in Florida) then the bankruptcy court in Florida would have simply declined to adjudicate the effect of its discharge to Jones, as the Massachusetts court did in the Claff case.

Then, again, Jones' second bankruptcy could only rest upon new debts which he contracted since his first bankruptcy, and such old debts under the first as would come into the second bankruptcy proceedings. Black on Bankruptcy p. 90; citing In re. Drisko 2 Low. 430, Fed. cas. No. 4,090; Fisher v. Currier, 7 Metc. (Mass.) 424. Then by this law our debt was not a provable debt, except at our option. We ignored the second bankruptcy, and hence the discharge therein could not effect our judgment, the debt being in the form of a judgment at the

time Jones' discharge was refused him in Georgia as well as when the second proceedings were begun.

If it was necessary for us to have presented the court's refusal of discharge in Georgia to the Court in Florida would that refusal of discharge have been res adjudicata? If it was res adjudicata, then it was not a provable debt against Jones in the second proceedings, except at our option, because the latter proceedings could only rest upon subsequent debts of his since the first proceedings. The mere fact that the cases reviewed by the court below were cases in which these questions were discussed and passed on by the federal courts, would not at all exclude the jurisdiction of state courts in such matters. The effect of the discharge was left to be determined in any court in which it might arise, whether federal or state.

The court below says in its opinion (Record p. 14) "It will be observed that the record does not show why the discharge was refused in the first proceedings, nor does it show that the debt *in* this case comes within any of the exceptions of section 17 of the bankrupt act approved July 1, 1898; nor is it contended here that it does." Does not this language militate against the general principles of the doctrine of res adjudicata? Would not any question of fact upon which the Georgia Court based its refusal of discharge be excluded in considering such discharge? At the time of such refusal, under the Act of Bankruptcy there were only two grounds for refusing such discharge. Section 14 of the Act. One or the other of the two grounds must have been the basis of such refusal. But whatever it was, that court's decision was a final determination of the rights of plaintiffs in error as against M. C. Jones. The question could not be again opened, either in the way of pleading or evidence, for future adjudication between the parties. Gunter v. Atlantic Coast Line R. Co., 200 U. S. p. 273.

PROPOSITION B.

As to this principle, we cite the court to the case of Abendroth v. Van Dolsen 131 U. S. (L. C. P. Ed.) at page 59 where Justice Lamar, delivering the opinion, says, "An adjudication in bankruptcy partakes in part of the nature of a judgment in rem and in part of the nature of a judgment in personam. With regard to the estate of the bankrupt debtor which has been, by the court's warrant of seizure, or by the surrender of the debtor, brought within the possession and jurisdiction of the court, its orders, decrees, and judgments as to the right and title to the property, or as to the disposition of it among the parties interested, are binding upon all persons and in every court. As a determination of the legal status of the bankrupt, or of the relation of the creditors to both, its judgment is conclusive *in all courts* where it is pleaded."

We pleaded our judgment of the court's refusal of discharge of Jones as a bankrupt to Jones' bill for injunction. That bill was a collateral attack upon the judgment which we had obtained against Jones, in the court's denying him his discharge as a bankrupt. The bill for injunction sought, in effect, to change our status to Jones. Instead of the court below adopting the principles enunciated by the late Justice Lamar in the above opinion it "prudently" sends us to this court, where we now ask for the relief prayed in our assignment of errors.

Respectfully submitted,

BENJAMIN Z. PHILLIPS,

JOHN M. SLATON,

H. K. OLLIPHANT,

Attorneys for plaintiffs in error.

Supreme Court of the United States,

OCTOBER TERM, 1907.

No. 94.

AARON BLUTHENTHAL AND MONROE L. BICKART, CO-PARTNERS AS BLUTHENTHAL & BICKART,

PLAINTIFFS IN ERROR,

vs.

ANGUS O. JONES, ADMINISTRATOR OF MILES C. JONES, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

Supplemental Brief for Plaintiffs in Error.

It is respectfully submitted that if Bluthenthal & Bickart had appeared in the Florida Bankruptcy Court in opposition to the discharge of Jones they could not have urged the refusal of the Georgia Bankrupt Court to grant Jones a discharge, for the reason that there is no provision therefor under the Act.

The grounds for opposing a discharge are specifically stated in Section 14-b, as amended, of the Bankrupt Act.

In order to have successfully opposed Jones' discharge before the Florida Bankrupt Court, it would have been necessary for them to have urged the same objections as they urged before the Geor-

gia Bankrupt Court. To insist that this proceedure be adopted in order to protect their claim would be violative of the principle of res adjudicata. See Kuntz vs. Young, C. C. A. 131 Fed. Rep. 719.

A discharge under the Act cannot be a partial one, but must be general, and the effect of such discharge is a matter to be determined in the court where it is plead. See Claff, 111 Fed. Rep. p. 506.

If Bluthenthal & Bickart were under the necessity of contesting with Jones his right to a discharge in the Florida Bankrupt Court, the process might have been indefinitely continued through every District Court in the United States.

In order to illustrate as to the effect of the discharge: Suppose that Jones had incurred debts subsequent to the Georgia refusal of a discharge and desired to get rid of these as well as the Bluthenthal & Bickart judgment, he might well have been entitled to a discharge in the Florida Bankrupt Court of all the subsequent debts; and had Bluthenthal & Bickart appeared and plead the refusal of a discharge by the Georgia Court as res adjudicata, such plea would be no reason to deny a discharge as to the debts subsequently contracted; and yet there is no provision in the Bankrupt Act either for a permanent stay or a partial discharge, as was suggested in re Kuffler, 151 Fed. Rep. 12.

When Jones attempted to set up his Florida discharge against the judgment of Bluthenthal & Bickart, it was successfully met by the refusal of the discharge made by the Georgia Court. It was a case of a plea of estoppel against an estoppel, and the effect of the refusal to grant the discharge being res adjudicata, would have been effectual against the Florida discharge sought to be plead.

In their brief counsel for defendant in error assume that the judgment of plaintiffs in error in the State Court against M. C. Jones was subsequent in date to the refusal of discharge by the Bankruptcy Court in Georgia. This is error. The judgment was obtained August 7th, 1900, and the order refusing the discharge was December 3rd, 1900. Record pp. 1-6. Also p. 2 of Brief.

However, were the facts as assumed by counsel for defendant in error correct, the authorities cited in support of this position would be contrary to the law as settled by this court. It has distinctly decided that in bankruptcy the judgment would not operate such a novation of the debt as to give it a different status in the proceedings. Boynton vs. Ball, 121 U. S. 457-465.

Respectfully submitted,

BENJ. Z. PHILLIPS,

JNO. M. SLATON,

H. K. OLLIPHANT,

Attorneys for Plaintiffs in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 94.

AARON BLUTHENTHAL AND MONROE L. BICKART, COPARTNERS AS BLUTHENTHAL & BICKART, PLAINTIFFS IN ERROR.

vs.

ANGUS O. JONES, ADMINISTRATOR OF MILES C. JONES, DECEASED.

BRIEF IN BEHALF OF DEFENDANT IN ERROR. SOLON G. WILSON ON BRIEF.

The Supreme Court of the State of Florida in its opinion says, "But we do not think that in a case like the one at bar, it would be prudent or proper to do more in giving effect to a discharge, than to determine whether the debt was embraced in the exceptions of the statute, leaving all other questions to be determined by the Federal Courts, where they properly belong," and held that the question of a refusal of the discharge in the first application in the District Court of the State of Georgia was one res adjudicata, and one which the creditor, the Plaintiff in Error here, should have raised in the second application for discharge in the District Court in the State of Florida.

That the Plaintiff in Error could not have successfully resisted the application for a discharge in the second proceeding, except by setting up the alleged estoppel raised by the refusal of the former adjudication in the proceeding in the Federal Court in Georgia goes without saying. To our minds, the fact that they failed to avail themselves of the op-

portunity to make such resistance in the Federal Court in Florida after having received due notice of such application, on the ground mentioned, equally estops them now to assail the order of discharge, or at this late day, to urge or rely upon the order of the Federal Court in Georgia as an estoppel. Res adjudicata and estoppel, like all other defenses, must be pleaded, or in some way brought to the attention of the court before a final judgment of such defense is waived.

Lowns vs Nims, 20th Am. D. 578, Vol. 8, Enc. of P. & P., pages 7-13; Vol., 9 Ib., pages 612 & 613; Vol. 17, Enc. of Law, page 926; Phil. W. & B. R. R. Co. vs. Howard, Book No. 14 (U. S.), page No. 169. Collier on Bankruptcy (4th Ed) 202; In re Wesson, 88th Fed. 855; Anthony W. Dimock vs. Revere Copper Co. of Boston, U. S., book 29, page 994.

That the decree of discharge is valid and impregnable and cannot be attacked or annulled by any court except that granting the same, and by it only within one year after the date thereof, and for certain reasons specified in the Bankruptcy Act. (See the following):

Collier on Bankruptcy, page 192, Ib. Section 15 of Act. In re Webster Shaffer 4th Am. B. R. 738.

If it be admitted then that the decree cannot be attacked or assailed in this proceeding, what is the effect thereof? In the language of the decree, "It is, therefore, ordered by this court that said Miles C. Jones be discharged from all debts and claims which are made provable by said Acts (referring to the Acts of Congress relating to Bankruptcy) against his estate, and which existed on the 3rd day of August A. D. 1903." The language of the Act is the same in substance.

What claims then are provable under the Acts? Referring to Section 63 a. (1,) Act of 1898, we find among the debts which may be proved and allowed the following: "A fixed liability as evidenced by a judgment or an instrument in writing absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon, which would have been recoverable at that time or with a rebate of interest upon such as were not then payable and did not bear interest."

Surely it will not be contended that the judgment in this instance was not a provable debt under the law, nor that the claim upon which it was recovered, the same appearing to be an open account for goods, wares and merchandise sold, is embraced in that class which the Act provides shall not be effected by a discharge.

Even conceding for the sake of argument the contention of the Plaintiffs in Error, that the former adjudication, although never raised or pleaded in the second proceeding, renders the discharge inoperative

as to the claim of the said Plaintiffs in Error, proven in the first proceeding, we contend that the fact, that the claim of the Plaintiffs in Error, as scheduled in the second proceeding, being a judgment of the State Court of Florida, was not the same claim or debt as that scheduled and proven in the first; that the suit upon the open account and recovery of judgment in the State Court, after a refusal of a discharge in the Federal Court of Georgia, merged the open account into the judgment and is a new debt of a higher order and dignity, and one which is provable under the Bankruptcy Act. Vol. 20 Enc. of Law (Second Ed.) Page 599, Higgin's Case, 6 Coke 45; Drake vs Mitchell, 3 East 251; King vs Hoare, 13 M. & W. 494; Smith vs Nicolls, 5 Bing N. Cas. 220, 35 E. C. L. 94; In re European Cent. R. Co. 4 Ch. D. 33.

Cromwell vs. Davis L. C. P. Co. Book 4, page 563, appealed to U. S. Supreme Court, affirmed in Vol. 39 U. S., page 578.

U. S. vs Leffler, 11 Pet. (U. S.) 101; Lyman vs. Brown, 2 Curt. (U. S.) 562; U. S. vs. Price, 9 How. (U. S.) 83; U. S. V. Cushman, 2 Sumn. (U. S.) 437; Manhattan Trust Co. vs. Trust Co. of North America, (C. C. A.) 107 Fed. Rep. 328.

Mobile Bank vs. Mobile, etc., R. Co., 69 Ala. 305; Thomason vs. Odum, 31 Ala., 68 Am. Dec 159.

Whiting vs. Beebe, 12 Ark. 421.

Bank of North America vs. Wheeler, 28 Conn. 433, 73 Am. Dec. 683.

Wann vs. McNulty, 7 Ill. 355, 43 Am. Dec. 58; Wayman vs. Cochrane, 35 Ill 152; Runnamaker vs. Cordray, 54 Ill. 303; Rock vs. McDavid, 91 Ill. App. 262; Shadbolt vs. Findeisen, 88 Ill. App. 432.

Ward vs. Haggard, 75 Ind. 384; Cissna vs. Haines, 18 Ind. 496; Rawley vs. Hooker, 21 Ind. 144; Ault. vs. Zehering, 38 Ind. 429; Gould vs. Hayden, 63 Ind. 443; Wilson vs. Buell, 117 Ind. 317; Crosby vs. Jeroloman, 37 Ind. 264; North Vernon vs. Voegler, 103 Ind. 314; Indiana, etc., R. Co. vs. Koons, 105 Ind. 507; Marshall vs. Stewart, 65 Ind. 243; Hoard vs. Bradbury, 156 Ind. 20.

North vs. Mudge, 13 Iowa 496, 81 Am. Dec. 441; Johnson vs. Butler, 2 Iowa 535; Estes vs. Chicago, etc., R. Co., 72 Iowa 235.

Stauffer vs. Remick, 37 Kan. 454; Ashton vs. Clayton, 27 Kan. 626; Price vs. Atchison First Nat. Bank, (Kan. 1901) 64 Pac. Rep. 637.

Brown vs. West, 73 Me. 24; Bicknell vs. Trickey, 34 Me. 273; Uran vs. Houdlette, 36 Me. 15; Pike vs McDonald, 32 Me. 418, 54 Am. Dec. 597.

Groverman vs. Diffenderfer, 11 Gill & J. (Md.) 15; Harris vs. Alcock, 10 Gill & J.) Md.) 226, 32 Am. Dec. 158.

Bangs vs. Watson, 9 Gray (Mass.) 211; Thatcher V. Gammon, 12 Mass. 268; Wyman vs. Fabens, 11 Mass. 80.

Pitts vs. Fugate, 41 Mo. 405; Cooksey vs. Kansas City, etc., R. Co., 74 Mo. 477.

Andrews vs. Varrell, 46 N. H. 17.

Baker vs. Baker, 28 N. J. L. 13, 75 Am. Dec. 243; Mutual L. Ins. Co. vs. Newton, 50 N. J. L. 571; Wooster vs. Cooper, 59 N. J. Eq. 204.

Besley vs. Palmer, 1 Hill (N. Y.) 482; Goodrich vs. Dunbar, 17 Barb. (N. Y.) 644; Shaw vs. Broadbent, 129 N. Y. 114; Davies vs. New York, 93 N. Y. 250; Carr vs. Rischer, 119 N. Y. 117; Taylor vs. Root, 4 Keyes (N. Y.) 335; McButt vs Hirsch, (C. Pl. Spec. T.) 4 Abb. Pr. (N. Y.) 449, note, Suydam vs. Barber, 18 N. Y. 468, 75 Am. Dec. 254; Gutta Percha, Etc., Mfg. Co. vs. Houston, 108 N. Y. 278, 2 Am. St. Rep. 412.

Grant vs. Burgwyn, 88 N. Car. 95; Platt vs. Potts, 11 Ired. L. (33 N. Car.) 266, 53 Am. Dec. 412; Gibson vs. Smith, 63 N. Car. 103.

Brigel vs. Creed, (Ohio 1901) 60 N. E. Rep. 991.

Jones vs. Johnson, 3 W. & S. (Pa.) 276, 38 Am. Dec. 760; Murray vs. Weigle, 118 Pa. St. 159.

Napier vs. Gidiere, Spears Eq. (S. Car.) 215, 40 Am. Dec. 613.

Jameson vs. Barber, 56 Wis. 630.

In Van Ingen et al. vs. Parmenter et al., 44 N. E. Reporter, 121, the Supreme Court of Massachusetts, in passing upon the identical question as to the effect of proving a debt in a former proceeding in which a discharge was refused, and after having held that such refusal was no bar to a second application for discharge, uses this language: "If it were necessary, this case could be decided on narrower ground. The Plaintiffs have taken judgment on their claim since the discharge was refused, and according to the decisions when the judgment creditor lives in this State the judgment creates a new debt with different incidents and presumably for a different sum, as it probably includes costs." Citing Bangs vs. Watson, 9 Gray 211; Wilcott vs. Hodge, 15 Gray 548; Bradford vs. Rice 102 Mass. 472 and Light vs. Mariam, 132 Mass. 283. And the same is held by many other authorities.

In re Bybee, U S. District Court, Northern District of California, 10 A. B. R. 761, it is said: "Where a judgment denying a debtor a discharge from a debt under State Insolvency law is silent as to the grounds upon which it is based, his right to a discharge from such debt in bankruptcy is not affected thereby." Citing 53 Fed. 893.

And in Dean vs. Justices Municipal Court, 2nd. A. B. R., page 163, the Supreme Court of Massachusetts in the headnote speaks as follows:

"Where a debt was not proven in bankruptcy proceedings, and upon a prior proceeding under an insolvency law of the State of Massachusetts, it was proven and a discharge of the debtor was refused, held this fact does not evade the effect of the discharge granted in the bankruptcy proceeding. And the bankrupt is discharged from such debt unless it was one of the exceptions contained in Section 17 of the Bankruptcy Act.

Under Section 17 the debts upon which a discharge is inoperative are as follows: 1st: Those due as a tax levied by the United States or other governmental authorities. 2nd: Liabilities for obtaining property by false pretenses or representations, or for wilful and malicious injury to the person or property of others, alimony due or to become due, maintenance or support for wife or child, etc. 3rd: Such as have not been duly scheduled in time for proof and allowance, the name of the creditor if known, unless the creditor had actual knowledge of the proceedings. 4th: Those created by fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity.

From the above it will be clearly seen that the claim of the Defendants against the Complainant does not fall within any of the foregoing exceptions and therefore is effected by the discharge.

Under the law the discharge is presumptively effective as to all claims and demands whatsoever, and whenever it is pleaded or whenever it is alleged, as in this case, it it incumbent upon the party resisting its effect to show by proper pleadings and proof that the claim sought to be enforced is embraced in one of the classes specified by Sec. 17 of the Bankruptcy Act. No such contention is made in this case.

This principle is unanimously expressed in the authorities and especially in re Blac, reported in 4th A. B. R, 471 and in 97 Federal 493, the same being one of the principal authorities relied upon by defendant's counsel. In that case, which was a decision upon the application for a discharge which was contested that the discharge would be granted generally, and that the creditor opposing the same, in order to avoid its effects, must when it was pleaded set up the fraud alleged by the creditor in order to show that his claim was not effected by the discharge granted.

To the same effect is in re Marshal Paper Co. 4th A. B. R. 468, and Collier on Bankruptcy, page 135.

Solon G. Wilson,
Counsel for D.E.